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CrI.A.No.530 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : **10.08.2023**

Pronounced on : **21.12.2023**

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE K.KUMARESH BABU

CrI.A.No.530 of 2018

Isaack @ Jeyakaran Issack

..... Appellant / Accused

Vs.

The State represented by
Inspector of Police,
(L&O), Vellore South Police Station,
Vellore.

..... Respondent / Complainant

Prayer : Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence passed against him in S.C.No.112 of 2017 dated 30.07.2018 by the Additional District and Sessions Judge (FTC) at Vellore Court.

For Appellant	: Mr.V.Parthiban for Mr.R.Narendran
For Respondent	: Mr.R.Muniyapparaj, APP for Mr.M.Sylvester John



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JUDGMENT

WEB COPY **R.SURESH KUMAR, J**

This Criminal Appeal arise out of the conviction and sentence registered by the Additional District and Sessions Judge / FTC, Vellore District at Vellore, dated 30.07.2018 made in S.C.No.112 of 2017.

2. The prosecution case is that, the appellant / accused was residing at C-7, Vasanthapuram Road, Pulianthope, Vellore and the deceased Sankar was residing at Door No.76, Rangasamy Nagar, backside of Alankar theatre.

3. The deceased Sankar is the husband of one Asha, who is the sister of the appellant / accused. The marriage solemnised between the deceased Sankar and Asha 1 ½ years prior to 24.02.2017, the date of occurrence.

4. The deceased since was having the habit of consuming alcohol regularly, there has been a constant quarrel between the husband and wife, i.e., the deceased and his wife Asha, with the result, Asha often would come back to the parental home and again would return back.



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5. Because of this attitude and the quarrel between them, as the sister of the appellant / accused very often come back and reside at the parental home, the appellant / accused got annoyed and therefore he was having in the mind to take revenge against the deceased.

6. In order to achieve the goal of such revenge, on 24.02.2017 at about 7.30 p.m, while the deceased proceeding by walking near Nethaji stadium, the appellant / accused restrained the deceased and thrown a plastic pottalam, i.e., pocket which contain kerosene and set a fire by saying இத்தோடு தொலைந்து போடா. Because of such act of the appellant / accused, the body of the deceased was burning, thereby he sustained burn injuries. Though he had been rushed to the Hospital and was taking treatment from 27.02.2017 till 01.03.2017, however, the deceased succumbed to such burn injuries on 01.03.2017. Therefore the earlier offence registered against the appellant / accused under Section 341 and 307 IPC was altered into 341 and 302 IPC.



7. In this case, on behalf of the prosecution, 15 witnesses were examined. Ex.P.1 to Ex.P.17 were marked. There two Material Objects, i.e., M.O.1 and M.O.2 were produced and marked.

8. In support of the prosecution case, though 15 witnesses were examined, none of them was eye witness. P.W.3, P.W.7, P.W.8, P.W.9 and P.W.10 turned hostile.

9. P.W.1, one Anbu is the sister of the deceased, she deposed stating that, when she was working at the shop nearby which belongs to her husband, one of the customer had come and stated that, her brother, i.e., the deceased being burnt, thereafter she claimed to have rushed to the spot, where the people who were in the spot already poured water. She claimed to have joined with them and after extinguishing the fire, they took the deceased to the Adukambarai Government Hospital, where he was admitted as inpatient. However, in her cross-examination, the P.W.1 has stated that, because of the commotion between the husband and the wife, i.e., the deceased and the wife of the deceased who is the sister of the appellant / accused often return back to the parental home, the commotion and



altercation would be taken place was the question asked, for which, the answer was in the negative. When further question was asked that, whether the occurrence was taken place before the people came and informed to her, she answered in the affirmative. She also stated that, what was the cause for such fire accident to the deceased, i.e., brother of P.W.1, she said that she was not aware. The relevant portion of her deposition in the cross-examination reads thus :

"என் தம்பி மனைவி அவரது அம்மா வீட்டில் இருப்பார். என் தம்பி மனைவி கோபித்து கொண்டு தாய் வீட்டிற்கு செல்வதால் தகராறு நடக்குமா என்றால் அவ்வாறு நடக்காது. சம்பவமானது ஜனங்கள் வந்து சொல்வதற்கு முன்பே முடிந்துவிட்டு என்றால் சரிதான். என் தம்பிக்கு தீ விபத்து எவ்வாறு ஏற்பட்டது என்று நேரடியாக எனக்கு தெரியாது என்றால் சரிதான். மருத்துவமனைக்கு இரவு 8.30 மணிக்கு சென்றடைந்து விட்டேன். பரிசோதனை செய்து 10.30 மணிக்கு அட்மிட் செய்துவிட்டார்கள். சம்பவ தினமே இரவு 11.00 மணிக்கு போலீசார் வார்டிற்கு வந்துவிட்டார்கள்."



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She also deposed saying that, on the same day at about 11 'O' Clock, police people came to the ward.

10. P.W.2 is the husband of P.W.1. He also in the chief examination has stated similarly as that of P.W.1. However, in the chief examination, he has further stated that, at the time of the occurrence, he was in the bunk shop, from that place, he cannot see the scene of occurrence and when he went there, already the fire was extinguished by pouring water and how he got fire on his body is not known to him. The relevant portion of the deposition in his chief examination reads thus :

"நான் சம்பவம் நடந்தபோது பங்க் கடையில் இருந்தேன், நான் நின்ற இடத்திலிருந்து சம்பவ இடம் தெரியாது. நான் போய் பார்த்த போது தண்ணீர் ஊற்றி அணைத்துவிட்டார்கள். எப்படி எறிந்தார் என்று நேரடியாக தெரியாது, போலீசார் விசாரித்தார்கள்."

11. In the cross-examination, the P.W.2 has stated that, what was the cause for such incident taken place is concerned, it is only an accident and



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no one caused such incident was the question, which was answered in

affirmative by P.W.2. The relevant portion reads thus :

"சங்கருக்கு ஏற்பட்ட விபத்தானது
எதிர்பாராத விபத்து என்றும் அதை யாரும்
செய்யவில்லை என்றால் சரிதான்."

12. P.W.3 and P.W.4 turned hostile. P.W.5 is none other than another brother of the deceased who was working in an out station and he had come only in the next day and therefore what he has stated is only a hearsay. In his deposition he has stated that, to a query that the appellant / accused does not have any connection with the occurrence and it is a set up one, the answer of the witness was that, he does not know anything directly. The relevant portion of the deposition reads thus :

"இந்த குற்றத்திற்கும் எதிரிக்கும் எந்த
சம்மந்தமும் கிடையாது. ஜோடிக்கப்பட்ட
விஷயம் என்றால் எனக்கு நேரடியாக எதுவும்
தெரியாது."

13. P.W.6 is the younger brother of the deceased and he also stated the hearsay. P.W.7, P.W.8, P.W.9 and P.W.10 turned hostile.



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14. P.W.12 was the Sub-Inspector of Police and he claimed to have received information from Adukambarai General Hospital at about 2 a.m on 24.02.2017, i.e., early morning of 25.02.2017. Though he claimed to have recorded a statement, he has stated in his cross-examination that, before he obtained the statement from the deceased who had already given a statement before the Doctor, where he had stated that, he did not know who caused the burn injury to him. The relevant portion of his deposition reads thus :

"சங்கரானவர் நான் வாக்குமூலம் பெறுவதற்கு முன்னால் தனக்கு காயம் அடைவித்தது யார் என்று தெரியாது என பணி டாக்டரிடம் கூறியுள்ளார்."

15. It is further to be noted that, P.W.1 in her cross-examination had recorded that, on the same day at about 11 'O' clock in the night, the police came to the ward, i.e., the Hospital, whereas P.W.12, Sub-Inspector of Police had stated that, he received the intimation first time from the Hospital only at 2 'O' clock in the night, i.e., early morning 2 'O' clock of 25.02.2017 and the P.W.12 in his cross-examination also has stated that, in the Ex.P.7, it has been mentioned that, the statement was recorded at 00.30 hours on 25.02.2017. P.W.12 stated that it was correct.



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16. Therefore contradictions can be noted here that, P.W.1 stated that, the police came to the Hospital by 11 p.m, whereas the Sub-Inspector of Police stated that, he had received information only at 2 a.m. However, he claimed to have recorded the statement at 00.30 hours.

17. The Investigating Officer was examined as P.W.13, where he stated that, in the statement obtained by him from the accused, it has been mentioned the name of the father of the accused as Jagaiyan, however, the fact remains that, Jagaiyan is the father of the deceased Sankar. In this regard, when suggestion was made on behalf of the defence side, the Investigating Officer, i.e., P.W.13 has stated the following :

"எதிரியிடம் பெறப்பட்ட ஒப்புதல்
வாக்குமூலத்தில் எதிரியின் தந்தை பெயர்
ஜக்கய்யன் என்று குறிப்பிடப்பட்டுள்ளது
என்றால் சரிதான். ஜக்கய்யன் என்பது
இறந்து போன சங்கரின் அப்பா பெயர்.
எதிரியை சம்பவ இடத்தில் சொன்ன
நேரத்தில் சொன்ன இடத்தில்
பிடிக்காததால் தான் இந்த தவறு
ஏற்பட்டுள்ளது என்றால் சரிதான்."

18. In the cross-examination, P.W.14 has recorded the following :



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"காயச் சான்றில் பாதிக்கப்பட்ட நபரே அடையாளம் தெரியாத ஒரு நபர் என்ற விவரத்தை பாதிக்கப்பட்டவரே கூறினாரா அல்லது கூட வந்தவர் கூறினாரா என்று குறிக்கவில்லை. எனக்கு அ.த.சா.ஆ.14 மற்றும் 15ஐ பொறுத்து நேரடியாக எனக்கு தெரியாது கோப்புகளை பார்த்து தான் சாட்சி அளித்தேன்."

19. P.W.15 is the Judicial Magistrate, who obtained a statement as dying declaration from the deceased, where the deceased has stated the following :

"அவ்வாறு பதிவு செய்யப்பட்ட மரண வாக்குமூலம் ஆனது அ.த.சா.ஆ.ஆ.17 ஆகும். அவர் வாக்குமூலத்திலிருந்து அவர் கூறியதாவது அவரது விபத்தானது அவரது மனைவியின் தம்பி ஐசாக் மற்றும் அவரது நண்பர்கள் அவரை வழிமறித்து ஐசாக் அவர் மீது பெட்ரோலை ஊற்றியதாகவும் அவரது நண்பர்கள் கவரிலிருந்து பெட்ரோலை எடுத்து ஊற்றியதாகவும் கவரிலிருந்து பெட்ரோலை தூக்கி அடித்ததாகவும் பிறகு 3 பேரும் சேர்ந்து



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தீக்குச்சியை பற்ற வைத்து நோயாளி மீது
போட்டதாகவும் கூறியுள்ளார்."

20. If at all this statement as dying declaration recorded by the Magistrate from the deceased is correct, it is not the single accused, i.e., the appellant plus three persons also according to the deceased had involved in the incident, however, the prosecution had not extended its arm to investigate who are all the other three persons who accompanied the appellant / accused and who also whether allegedly poured petrol and set fire on the body of the deceased.

21. It is further to be noted that, there are three statements, one is to the Doctor, another is to the police and the third one is to the Magistrate. Each time the statement has got improved. In the statement given before the Doctor, the deceased stated that, he was not aware who was the person who caused such injury. However in the statement recorded by the police, it has been recorded as if that, he has fingered the appellant, but in the statement which was recorded as dying declaration by the Magistrate, it has been recorded as if that the deceased stated not only the name of the appellant but



also the other three persons who also joined in the action of pouring the petrol and set fire on the body of the deceased.

22. Therefore such a rampant contradiction which we are able to find out in these three statements makes it clear that, the version if at all had been made by the deceased, that has been improved from time to time, therefore the veracity of such statement is highly doubtful.

23. That apart, in this case there has been no eye witness. Most of the witnesses have turned hostile. The very few witnesses who deposed before the trial court are the kith and kin of the deceased and more over all of them deposed stating that their statement were only based on hearsay. Moreover the police recorded that they received information first time on 24.02.2017 at night 2 'O' clock, that means, i.e., early morning of 25.02.2017. When that being so, the P.W.1 has recorded that, the police already came to the ward, i.e., the Hospital, where the deceased was admitted, at 11 p.m on 24.02.2017. Also to be noted that, P.W.12 has stated that, Ex.P,7 was recorded at 00.30 hours on 25.02.2017.



24. If that being so, there is a complete self contradiction in the version of the prosecution with regard to the time of receipt of information, time of visiting the hospital, time of recording the statement and the time of recording the FIR. This itself makes the entire prosecution case as a fatal, apart from the lack of eye witnesses and also a junk of witnesses produced by the prosecution having become turned hostile.

25. Besides, the three statement referred to, that is one to the Doctor, another to the Police Officer and another to the Magistrate have been improved from time to time, therefore its veracity is highly doubtful.

26. Assuming that, the last statement given to the Magistrate is to be taken into account, the deceased has stated that, it is not only the appellant but other three persons who are friends of the appellant who also jointly acted upon by pouring petrol and set him fire. If that being so, why the investigation has not extended to investigate about the involvement of other three persons also is not known. This is clear lacuna on the part of the prosecution side.



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27. Considering all these aspects, we are of the considered view that, the prosecution by having a cogent evidence has not proved the case beyond reasonable doubt. Therefore, such a benefit shall be extended only to the appellant / accused. Therefore we have no hesitation to hold that, the conviction and sentence imposed by the trial Court in the impugned Judgment is liable to be interfered with.

28. Resultantly, this Criminal Appeal is allowed and accordingly the conviction and sentence made in S.C.No.112 of 2017 dated 30.07.2018 on the file of the Additional District and Sessions Judge (FTC), Vellore are hereby set aside. Consequently, the appellant is acquitted from all the charges framed against him. Bail bonds and sureties executed by him shall stand cancelled. Fine amount, if any, paid by the appellant shall be refunded to him.

(R.S.K., J.) (K.B., J.)
21.12.2023

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No
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- To
1. The Additional District and Sessions Judge (FTC)
Vellore.
 2. The Inspector of Police (L&O),
Vellore South Police Station,
Vellore.
 3. The Public Prosecutor
High Court of Madras, Chennai.



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**R.SURESH KUMAR, J.
and
K.KUMARESH BABU, J.**

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2018

**Judgment in
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